

TTAB



07-31-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

08/25/2003 TTAB

HEARST COMMUNICATIONS, INC. and
HEARST MAGAZINES PROPERTY, INC.

Opposers,

Opposition No. 120,453

v.

CHARLES BROWNING WILSON,

Applicant.

08/25/2003
120,453

**APPLICANT'S MOTION IN OPPOSITION TO OPPOSERS' MOTION FOR
EXTENSION OF TRIAL TESTIMONY PERIODS**

Applicant, Charles Browning Wilson (hereinafter referred to as "Applicant" or "Cosmo") by and through his attorneys, Arnstein & Lehr, hereby moves this Court to deny the Motion of Opposers' Hearst Communications, Inc. and Hearst Magazines Property, Inc. (hereinafter collectively referred to as "Opposers").

BACKGROUND

On October 18, 1999, Applicant filed U.S. Service Mark Application Serial Number 75/810, 043 to register COSMO.COM for the provision of internet services in the field of entertainment. Applicant, whose nickname for years has been "Cosmo," is using the mark COSMO.COM in connection with an internet web site located at www.cosmo.com. The Court has, from the initiation of this action, granted at least eight (8) enlargements of time extending Opposers' Testimony Period.

ARGUMENT

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The standard for allowing a moving party an extension of a prescribed period prior to the expiration of that period is good cause. See Fed.R.Civ.P. 6 (b)(1): *American Vitamin Products, Inc. v Dow Brands, Inc.*, 22 USPQ 2nd 1316 (TTAB 1992) *Baron Philippe De Rothschild, S.A. et al. v. Styl - Rite Optical Mfg. Co.*, 2000 WL1300412 (TTAB 2000); and TBMP Section 509.

Opposer has not shown good cause so as to warrant an extension of its time to comply with the Board's Order of June 12, 2003. Since this Opposition was filed by Opposer on September 26, 2000, almost three (3) years ago, Opposer has requested and Applicant has cooperated and consented to numerous requests for extensions of the discovery and testimony periods. See Board Order dated April 17, 2001 (extending discovery from April 22, 2001 to June 22, 2001 and related testimony periods for additional two (2) months); Board Order dated June 29, 2001 approving Consent Motion to Extend Close of Discovery to August 22, 2001 and related testimony periods an additional two (2) months); Court Order dated October 5, 2001 (suspending proceedings for six (6) months to allow for settlement negotiations); Board Order dated November 15, 2001 (concluding that settlement negotiations were unsuccessful and resuming proceedings with discovery extended to March 15, 2002 and related Plaintiff testimony period extended to June 13, 2002); Board Order dated March 11, 2002 (extending the close of discovery to April 6, 2002 and Plaintiff's testimony period to July 5, 2002); Board Order dated May 30, 2002 (suspending proceedings for six months to allow negotiation for possible settlement); Board

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Order dated February 27, 2003 (extending Plaintiff's testimony period to May 10, 2003);

Board Order dated June 12, 2003 (extending Plaintiff's testimony period to June 10, 2003).

Opposers' basis for its extension is the move of Hearst Communications including Mr. Agdern's office, which was completed on May 5, 2003, over two (2) months before the close of the current trial testimony period, July 10, 2003. Applicant contends that Opposer's basis for its extension is insufficient in that its attorney should be able to locate any necessary documents within a period of two (2) months.

Moreover, Mr. Agdern and his liaison counsel knew that a Motion Extending the close of trial testimony had been consented to by Applicant in a motion filed May 5, 2003 extending close of the testimony period to June 10, 2003 and again on May 28th in a Motion to Extend the Trial Testimony Period to July 10, 2003. In each of these cases the office move was given as the basis for an extension. As noted above that move was "completed" on May 5, 2003, not begun.

Opposer's in house and outside attorneys have had ample notice of the numerous extensions of the trial testimony periods in this matter and were both well aware of the extension consented to by Applicant's counsel to July 10, 2003. Mr. Agdern had ample opportunity to prepare for both the move of his office and to organize his files accordingly.

Opposers' submit the Affidavit of Barry S. Agdern ("Agdern Aff.") the "inside Trademark Counsel" for the Hearst Corporation in support of their Motion for Extension of Trial Testimony Periods. Opposer's Motion claims that Mr. Agdern is unable to participate mainly because he has had to box up his files and move them from one office to another. See Agdern Aff. ¶ 4 and ¶ 5.

Mr. Agdern has had over three (3) years to prepare for the testimony, and has been in close contact with outside counsel throughout this case. Opposers have been well aware of the move and of the closing date for testimony in this case for months, if not years, and could certainly have prepared for the taking of testimony of Mr. Agdern or Ms. Koval within that time. Therefore, Applicant would argue that Opposer's basis for an additional extension of time is without merit, as Mr. Agdern has had ample opportunity to prepare and was well aware of the deadline for the testimony period in this case. Surely the well planned renovation of a historic office building in downtown New York where Mr. Agdern worked for many years was not a surprise to him. Thus, his inability to adequately plan and prepare should not serve as an excuse to further delay this application.

Applicant has been more than generous in accommodating Opposer's requests for extensions, but he is unwilling to condone any further dilatory tactics by Opposer to avoid its discovery responsibilities in this case. See *Rothschild v. Styl - Rite Optical Mfg.*, 2000 Westlaw 1300412, 9 (TTAB 2000)(extension denied and sanctions awarded for dilatory tactics and failure to comply with discovery order). Applicant has suffered the detriment of being unable to develop his web site or in the alternative to respond to a number of offers to purchase his web site due to the uncertainty of litigation created by these proceedings. This latest request for an extension is clearly an attempt on the part of the Opposers to increase the cost and reduce potential for success of Applicant's web site and business. Opposer is attempting to over-extend the resources of an individual up against a large publishing empire and force the sale of the Applicant's primary asset at a discounted price.

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CONCLUSION

In light of the foregoing, Applicant respectfully requests that the Board deny Opposers' Motion or in the alternative allow the extension with the limitation that no further requests to extend Opposer's trial testimony period will be granted.

Dated: July 30, 2003
West Palm Beach, Florida

"Express Mail" mailing label No. ER 288516826 US

Date of Deposit: July 30, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

SCOTT R. AUSTIN
(Printed name of person mailing paper or fee)

[Signature]
(Signature)

Respectfully submitted,

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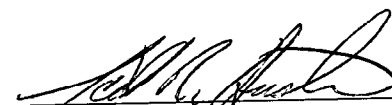
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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing **APPLICANT'S MOTION IN
OPPOSITION TO OPPOSERS' MOTION FOR EXTENSION OF TRIAL TESTIMONY
PERIODS** was served upon counsel for Opposer this 30th day of July, 2003 by First Class

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